SUPREME COURT, U.S.
SEP 10 1954
HAROLD B. WILLEY, Clerk

IN THE

Supreme Court of the United States

October Term, 1954

No. 20

JAMES R. ELLIS, as President of the Yonkers Committee for Peace, an unincorporated association,

Petitioner,

—against—

WILLIAM DIXON, *et al.*, as members of the Board of Education of the City of Yonkers, etc.,

Respondents.

ON A WRIT OF CERTIORARI TO THE APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK, SECOND DEPARTMENT

SUPPLEMENT TO PETITION FOR REHEARING

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Since the filing of the Petition for Rehearing during vacation, on June 27, 1955, the following additional points suggested themselves, and petitioner urges their consideration in connection with the Petition for Rehearing.

1. It is respectfully urged that the dismissal of the writ because the decision below could rest on an adequate non-federal ground, is an inadvertence procedurally. The issues should have been decided on the merits. The Court held that a state question remained open, because the

pleading failed to adequately plead discrimination, *i.e.*, it failed to allege that organizations similar to petitioner were granted the use of the schoolroom. But this allegation goes to the heart of the federal question whether enough has been alleged to show a denial of a constitutional right. The allegations themselves therefore present a federal question which no state court could preclude this Court from reviewing. Therefore, the federal question was adequately presented.

For instance, if the state court had expressly said (as distinct from the inferences that appear in the opinion) that petitioner did not show a clear right to relief because he had not alleged that *similar* organizations were granted the use, but not he, a federal question would arise. *It would present the federal question whether such an allegation is necessary to secure a right claimed to have been denied under the federal Constitution.* It is therefore respectfully submitted that the conclusion, "the state court's decision rested on an adequate non-federal ground" is not correct. (This is recognized by the opinion, page 5, where it is said, "It is established law that this Court is not finally concluded by the state court's determination as to the sufficiency of pleadings asserting a federal right". It would follow that this statement—this premise—in the opinion should have led to a conclusion entirely different from the one reached. The failure to do so points up an inconsistency that cannot be reconciled.)

2. As to the remark in the opinion that the record is empty and inadequate on which to decide the constitutional issue on its merits, it is urged that there are sufficient

facts as a matter of pleading. This was briefed in Petition for Rehearing.

The Court will agree that pleadings should be concise and to the point. Indeed, the New York law, Section 1288 provides that the petition "shall contain a plain and concise statement of the material facts on which the petitioner relies". To say now that the pleading is "empty" because it is not replete with extraneous matters or loaded with evidentiary claims is to deny effect to the New York statute. What this petitioner did was to comply with the New York law, by concisely alleging the material facts to show a denial of a right under the Constitution. Conciseness cannot be fairly equated with emptiness, nor is verbosity a substitute for substance. It is submitted, that as a pleading, sufficient material facts were shown to warrant a disposition of the case upon its merits.

A recent case involving the disposition of an important Constitutional issue on a pleading is found in Joint Anti-Fascist Refugee, 341 U. S. 123.

The Court should be greatly inclined to have this issue adjudicated on its merits. This problem is recurrent, as indicated in the Petition for Writ of a Certiorari, page 2. Since this Court's decision on June 6, 1955 in this case, a similar case arose again on the pleadings in the Supreme Court, Westchester County, *Hooker* v. *Conte*, New York Law Journal, July 18, 1955, page 5.

Respectfully submitted,

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